

ORDER NO. 2657

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langley

Competitive Product Prices
Priority Mail Express & Priority Mail Contract 12
(MC2013-33)
Negotiated Service Agreement

Docket No. CP2013-44

ORDER APPROVING AMENDMENT 2 TO
PRIORITY MAIL EXPRESS & PRIORITY MAIL NEGOTIATED SERVICE AGREEMENT

(Issued August 12, 2015)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail Express & Priority Mail negotiated service agreement.¹ For the reasons discussed below, the Commission approves Amendment 2.

¹ Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Express & Priority Mail Contract 12, July 31, 2015 (Notice). Amendment 2 is an attachment to the Notice (Amendment).

In Order No. 1652, the Commission approved the Priority Mail Express & Priority Mail Contract 12 negotiated service agreement (Existing Agreement).² On July 31, 2015, the Postal Service filed notice that it has agreed to an Amendment to the Existing Agreement. On August 4, 2015, the Commission issued an order reopening this docket to consider Amendment 2, appointing a Public Representative and providing interested persons with an opportunity to comment.³

The Postal Service intends for Amendment 2 to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5. *Id.* The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. § 3633. Notice, Attachment B.

II. COMMENTS

Comments were filed by the Public Representative.⁴ No other person submitted comments.

The Public Representative reviewed the Amendment, the Existing Agreement, and the financial model filed under seal. PR Comments at 2. Based on that review, she concludes that the Existing Agreement, as amended, should continue to generate sufficient revenues to cover costs and satisfy 39 U.S.C. § 3633(a) during the next year of the contract. *Id.* She also concludes that the mechanism in the amended contract for

² See Docket Nos. MC2013-33 and CP2013-44, Order Adding Express Mail & Priority Mail Contract 12 to the Competitive Product List, February 11, 2013 (Order No. 1652). The contract was later amended. See Order No. 1667, Order Concerning Amendment to Express Mail & Priority Mail Contract 12, February 25, 2013. Express Mail was renamed Priority Mail Express after addition to the Competitive Product List.

³ Order No. 2635, Notice and Order Concerning Amendment 2 to Priority Mail Express & Priority Mail Negotiated Service Agreement, August 4, 2015.

⁴ Public Representative Comments on Postal Service Notice of Amendment to Priority Mail Express & Priority Mail Contract 12, August 7, 2015 (PR Comments).

an annual adjustment of prices should help maintain the contract's ability to meet the requirements of 39 U.S.C. § 3633(a) over the lifetime of the contract. *Id.* at 2-3.

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Postal Service's Amendment 2 revises Section I ("Terms") of the Existing Agreement by inserting new Sections I.F. and I.G. that provide for discounts off of the current published Commercial Plus prices for the respective products. Amendment 2 also entirely replaces Section II ("Annual Adjustment") of the shipping services contract. Notice, Attachment A.

Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the amended agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Existing Agreement, as amended, indicates it is consistent with section 3633(a). The annual rate adjustment provision in

Section II of the amended agreement should allow the amended agreement's revenues to cover costs for the duration of its term. The Commission will continue to review the cost coverage of the amended agreement in its Annual Compliance Determination to ensure that rates cover costs.

Other considerations. The Postal Service states that the Amendment shall become effective on the day after the date that the Commission completes its review of the filing.

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Express & Priority Mail Contract 12 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Ruth Ann Abrams
Acting Secretary